

Applicant: Robin Budd, *et al.*
U.S.S.N.: 09/895,466
Filing Date: June 29, 2001
EMC Docket No.: EMC-00-066

REMARKS

The Final Office Action mailed October 10, 2007 has been carefully considered.

Reconsideration is respectfully requested in view of the amendments made to the claims and for the remarks made herein.

Claims 1-3, 5, 6, and 8-16 are pending and stand rejected.

Claims 1, 11 and 12 have been amended.

The Examiner in maintaining the rejection of the claims in view of Ohran and Vinther states that "[a]pplicant argues in substance that the alternative path [communication means 2102 of Ohran] is used for transfer independent of whether the network between the computer is determined to be unavailable. The Examiner respectfully disagrees. [The] claims disclose the use of the alternate path when the network is unavailable; however [the] claims don't disclose that the alternate path [is] never used when the network is available; in other words, [the] claims don't define that the alternate path is used only when the network is available and never used when the network is unavailable. Ohran teaches the use of the alternate path [e.g., via connection means 241 in figs. 2-4] when the network is unavailable due to a failure of another server or a recovery." (see OA, page 2, section 2).

Applicant thanks the Examiner for providing further rationale for the maintenance of the rejection of the claims. However, in addition to the remarks made herein, applicant would like to clarify that the subject matter claimed is related to the type of information that is provided over the alternate path when the network is determined unavailable and not that the alternate path is only used when the network is determined unavailable, which the Examiner's rationale seems to imply.

As the specification makes clear, the alternate path (item 30 in Figure 1) is related to the transfer data stored on storage system to another storage system. Thus, the transfer of **network information**, and the method of transfer, over this alternate path represents a novel use of the alternate path when a particular condition occurs.

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Rejection under 35 USC 102

With regard to the maintenance of the rejection of claims 11-13 and 16 under 35 USC 102(b) as being anticipated by Ohran (USP no. 5,812,748), applicant respectfully disagrees with the reason for the same reasons cited in the response to the rejection of the claims in the prior Office Action. However, to further clarify the subject matter claimed, claims 1 and 11 have been further amended to recite that the system includes a primary network between computers and an alternate path between storage devices and that in the case of the determination of the unavailability of the primary network, information that would be transmitted over the primary network is transmitted over the alternative path in a protocol suitable for the alternate path. No new matter has been added. Support for this amendment is shown in Figs. 1 and paragraphs [0040] ("[i]f there existed an alternative transport mechanism that could provide the same functionality, the heartbeat datagrams, in this example, would continue to be delivered, just as if the primary communication mode were available") and [0043] ("[t]herefore, in one embodiment of the invention, the VNIC process is implemented as an NDIS miniport driver that simulates the existence of an Ethernet adapter.").

As argued previously, Ohran discloses a method for providing rapid recovery from a network file server failure through the use of a backup computer system. The backup computer system runs a special mass storage access program that communicates with a mass storage emulator program on the network file server, making the disks on the backup computer system appear like they were disks on the file server computer. Ohran teaches the use of a heartbeat system to determine which of two computer systems is selected as a primary and which is selected as a backup (see col. 14, lines 14-27). Ohran further teaches that communication means 2102 is used to synchronize the data between two different file servers to maintain the data content between the two file servers in case the backup file server must take over the functions of the primary file server.

In summary, Ohran teaches a system storing all information on a primary and a backup server and upon determination of a failure in the primary server have the backup server take over the operations of the failed primary server. For example, Ohran teaches in col. 7, lines 20-29, which is referred to in the Final Office Action, that "[i]nformation mirroring as described above is being performed by computers 111 and 122. It is also assumed that computer 121 has

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experienced a fault, causing server computer system to fail." Furthermore, the communication means 2102 is used for the transfer of backup data between the two systems so that data can be accessed by any server in case the primary server fails.

However, Ohran fails to disclose either the determination of the unavailability of the primary network or the use of the alternate path (communication means 2102) to provide network information when the primary network is determined to be unavailable, as is recited in the claims. In fact, Ohran cannot teach using communication means 2102 to transfer network information because Ohran specifically teaches a system that operates when the primary server has failed.

A claim is anticipated only if each and every element recited therein is expressly or inherently described in a single prior art reference.

Ohran cannot be said to anticipate the subject matter recited in claim 11 as Ohran fails to expressly or inherently describe each and every element recited in independent 11.

With regard to the remaining dependent claims, these claims ultimately depend from the independent claims and, thus, the remaining dependent claims are also allowable by virtue of their dependence from an allowable base claim, without arguing the merits of each claim individually.

For the amendments made to the claims and for the remarks made herein, applicant respectfully requests that the rejection be withdrawn.

Rejection under 35 USC 103

With regard to the rejection of claims 1-3, 5, 6, and 8-10 under 35 USC 103(a) as being unpatentable over Ohran (USP no. 5,812,748) in view of Vinther (WO 92/18931), applicant respectfully disagrees with and explicitly traverses the reason for rejecting the claims. However, as remarked above, independent claim 1 has been amended in a manner similar to that of claim 11, and, thus, the remarks regarding the Ohran reference with respect to claim 11 are applicable, and repeated, as if in full, in response to the rejection of claim 1.

As shown above Ohran fails to disclose a material element recited in claim 1.

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Vinther fails to provide any teaching to correct the deficiency found to exist in Ohran as Vinther considers failures in the network nodes and not the network. (see page 6, line 31-page 7, line 4 "[f]ailure of the fileserver node is catastrophic since it contains information needed by a large number of nodes. Accordingly, a backup fileserver 16 is connected to the primary fileserver through a parallel port 18 to maintain a copy of all of the primary's files. **Upon failure of the primary, the backup automatically assumes the role of the primary.**").

A claimed invention is prima facie obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations.

In this case, the combination of Ohran and Vinther fails to disclose all the elements recited in the independent claims as neither reference considers the unavailability of the network nor the transmission of network information via the alternate path when the network is unavailable.

Hence, contrary to the reasons for the rejection of the claim, applicant submits that subject matter recited in the claim is not rendered obvious by the teachings of the cited references because the combination of the cited references fails to recite a material element.

With regard to the remaining dependent claims, these claims ultimately depend from the independent claim 1 and, thus, the remaining dependent claims are also allowable by virtue of their dependence from an allowable base claim, without arguing the merits of each claim individually.

For the amendments made to the claims and the remarks made herein, applicant submits that the reason for the rejection of all the claims has been overcome and respectfully requests that the rejections be withdrawn and the claims be allowed.

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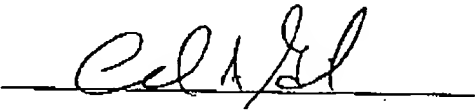
A Power of Attorney is submitted herewith, to allow the undersigned attorney, associated with customer number 73901, to represent the applicant in further prosecution of this matter before the Office. Entry of the new Power of Attorney is respectfully requested.

EMC Corporation is the owner of record of the instant application by virtue of the Assignment of all rights and title of the subject matter claimed to EMC Corporation by the inventors as evidenced by the assignment recorded at reel/frame 012455/0042

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

Dated: 12/10/07
December 10, 2007


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